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VOL. IV

No. 4

TRANSLATIONS AND REPRINTS

FROM THE

ORIGINAL SOURCES OF EUROPEAN HISTORY

—

ORDEALS, COMPURGATION, EXCOMMUN-
ICATION AND INTERDICT

(REVISED EDITION)

EDITED BY ARTHUR C. HOWLAND, PH.D.

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PUBLISHED FOR

THE DEPARTMENT OF HISTORY OF THE UNIVERSITY OF PENNSYLVANIA

BY THE

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MEDIÆVAL LEGAL PROCEDURE.

INTRODUCTION.

In the jurisprudence of the Middle Ages we do not find any trial in the modern sense of the word, no careful weighing of testimony followed by a decision in accordance with the evidence. The chief function of the court was to give a fore-judgment—the *Beweisurteil*—indicating which litigant was to have the privilege of offering proof as to the justice of his contention. Any form of compromise was unknown. One party was entirely in the right, the other absolutely in the wrong. The methods of proof were compurgation, ordeal and wager of battle, and the party on whom the burden of proof lay usually had the advantage in the subsequent proceedings. This was especially the case with compurgation, where compliance with the minute details of the prescribed forms insured complete success. In the ordeal this was less true, the result oftener depending on the attitude of those conducting the ceremony. The judicial duel and one form of the ordeal—that of the cross—were the only methods of procedure in which both sides were given the opportunity of proof. Throughout the Middle Ages the theory of the law placed the burden of proof on the negative side; and it may be counted a most important step in the progress of European civilization when the Germanic idea finally gave place to the Roman maxim that it is impossible to prove a negative, and that the necessity of producing evidence lies with the accuser. The barbarian system of negative proofs was worked out by means of oaths and of appeals to the judgment of God through ordeals and single combat. Whatever hardships the Germanic methods of proof may have involved theoretically, the practical outcome was to make easy the escape of bold criminals. A Hungarian manuscript * in which a record was kept for the 13th century, shows the numbers of convictions and of acquittals in the ordeal of hot iron to be about equal, while in England the accused was in certain cases given the choice whether he or the accuser should bear the iron. Speaking of the condition of things in John's reign Maitland says: "Criminal justice was extremely ineffectual; the punishment of a criminal was a rare event; the law may have been cruel . . . , but bloody it was not. In Henry III.'s time some satisfactory hanging was accomplished, but the number of presentments of undiscovered crime is very large." † The irrationality of such forms of legal procedure was strongly felt by the most enlightened minds, and from the middle of the 12th century we find ecclesiastical as well as secular legislation attempting to bring about a change. This reform did not involve the abandonment of negative proofs, but brought in the worst form of that system, namely, torture, wherein the chances of escape were reduced to a minimum and conviction became practically inevitable.

I. COMPURGATION.

Compurgation—or wager of law as it was more commonly called in England, from the legal phrase *vadiare legem*, to pledge or wage one's law—consisted in a litigant's furnishing the court satisfactory proof of the justice of his cause by means of his own

* Cited in Pollock and Maitland's *History of English Law*, II., 596, note 5.

† *Select Pleas of the Crown*, p. xxiv.

oath supported by that of helpers or compurgators who swore to the truth of their principal's assertions. This method of proof dates back to remote antiquity among the Germanic tribes, and on their conversion it was adopted by the church, which made such extensive use of it in its efforts to secure immunity of the clergy from secular jurisdiction that the process finally became known as canonical compurgation. The compurgators were originally kinsmen, who would have had to pay the *wer-gild* in case the accused had been convicted of the charge, but later custom permitted them to be neighbors or others acceptable to the court. Their number varied according to the gravity of the charge and the character of the accused. It is probable that even in the earliest times compurgation was not resorted to when the proof of the crime was plain and indubitable, and at a later period this rule was carefully enforced, it being left to the discretion of the judge whether the accused should be allowed this form of trial or not. Such permission was almost tantamount to acquittal, yet an effort was made to check the abuses of the system by the provision that compurgators who were so unfortunate as to support a losing cause should be punished as perjurers, that is, should have one hand cut off. Some codes, however, permitted the redemption of the hand by the payment of a money fine. At an early period confidence in the system became weakened, but it was not until the revival of the study of Roman law about the middle of the 12th century that compurgation, together with most forms of appeal to the judgment of God, began to lose ground in mediæval jurisprudence. From that time on it was discouraged by royal legislation. By 1300 it may be said to have disappeared from the king's court in France, though it still lingered for a long time in the provinces. In Germany it seems to have flourished as late as the 16th century, as also in most of the countries of northern Europe; while in England it was not formally abolished until 1833. In ecclesiastical courts the system was employed down to the 17th century, though the development of the inquisitorial process in the 13th century deprived it of most of its characteristic features.

I. TWO FORMS OF COMPURGATORIAL OATH.

(a) Form. Turon., M.G. LL., Sec. V, p. 154. Latin. 8th century.

[Defendant made oath denying the crime.] Likewise, witnesses of his own order, who were eye-witnesses and cognizant of the facts in the case, swore after him that the aforesaid N. had given a true and satisfactory oath in what he had sworn regarding the matter.

(b) Thorpe's Ancient Laws of England, I, p. 180. 10th century.

By the Lord, the oath which N. has sworn is clean and without falsehood.

2. COMPURGATION OF QUEEN FREDEGONDA IN 585.

Gregory of Tours, Hist. Franc. Lib., viii, c. 9, M.G. SS. Mer., p. 330.

On the assassination of Chilperic I. king Gontran became guardian of his brother's infant son. Doubts were entertained as to the child's legitimacy, especially as Chilperic was said to have been murdered by a paramour of queen Fredegonda. The latter, however, fully established the paternity of the child by a compurgatorial oath, and thus prevented the kingdom of Neustria from passing into the hands of Gontran.

After this the king [Gontran] went to Paris and openly addressed all the people, saying: "My brother Chilperic on his death is said to have left a son, whose governors begged me at the mother's solicitation to stand sponsor for him at the baptismal font on the day of the festival of our Lord's birth; but they did not appear. Next they asked me to have him baptised at Easter, but the child was not brought then. For the third time they prayed me that he might be presented for the sacred rite on St. John's Day, but the child was still kept back. And so they have compelled me to leave home at this disagreeable season of the year. Therefore I have come, and behold, the boy is concealed, he is not shown me. For these reasons I feel certain that matters are not as they have been represented, but that the child is, as I believe, the son of some one of our nobles. For, if it had been of our race, it would have been brought to me. Know, therefore, that I will not acknowledge it until I receive satisfactory proofs of its paternity." When queen Fredegonda heard this she summoned the chief men of her kingdom, namely, three bishops and three hundred nobles, and with them made oath that Chilperic was the father of the child. By this means suspicion was removed from the king's mind.

3. COMPURGATION OF THE BROTHERS OF ADELHER.

Passio S. Bonifatii, in Jaffé, *Bibliotheca Rer. Germ.*, III, p. 475. Latin. 11th century.

This story illustrates one of the abuses to which the system of compurgation lent itself, and at the same time shows how the clergy attempted to overcome it by emphasizing the danger of immediate punishment to the perjurer.

Some time after this it happened that a certain priest named Adelher was stricken with great weakness. He was indeed deeply devoted to the bishop [Boniface] on account of his noble character, and knowing the latter's secrets he served him truly. And when he perceived the end of life approaching, by the council of the man of God he gave what property he had inherited to St. Martin of Mainz. After this, his sickness increasing, he died. Afterwards his brothers violently seized what he had given to St. Martin in the following places, And when they had been summoned and questioned regarding their action, they promised to prove by an oath that the property was rightly theirs; and the bishop promised to be present. On the appointed day they brought together a large number of their relatives. The man of God was likewise there, and when the brothers

had fetched their compurgators to the altar he is reported to have said: "If ye will swear, swear alone; I do not desire that ye should cause the damnation of all these." But the brothers took the oath. And immediately the bishop turning to them said: "Have ye sworn?" "We have," they replied. Then to the elder he said: "Thou wilt shortly be killed by a bear;" but to the younger, "Never wilt thou see son or daughter from thy seed." Both of the prophecies proved true. And so the church of St. Martin received the heritage given to it.

4. COMPURGATION OF BISHOP NORGAUD OF AUTUN.

Hugh of Flavigny, Chron. Lib. II, M.G. SS., VIII, p. 494. Latin.

Norgaud, Bishop of Autun, had been accused of simony by his canons, and had attempted to clear himself by the oath-helpers; but the compurgators were deterred by fear of the charge of perjury, and Norgaud was deposed. He refused to resign his office, and in the following year succeeded in being reinstated by purging himself in the absence of his enemies. The incident shows another form of abuse of the system.

In the year of our Lord 1101 John, bishop of Frascati, was sent by the pope into England to look after the papal property. . . . The cardinals had now returned to Rome openly confirming the sentence of deposition against the invader of the see of Autun and pronouncing it to be canonical by authentic proofs, when the bishop of Lyons began openly and publicly to condemn their action. As he was setting out on a pilgrimage to Jerusalem in company with the bishop of Chalons-sur-Saône and the simoniacal bishop of Autun, he was met on the way by the aforesaid bishop of Frascati who, in the absence of accusers and outside the boundaries of his province, received the purgation of him of Autun. The bishop of Lyons aided and confirmed the oath as follows: "I believe that Norgaud, bishop of Autun, has sworn the truth, so help me God." The bishop of Chalons-sur-Saône also assisted and swore the same thing. I am astonished that the good judgment of so great a man,* renowned everywhere for his inborn goodness and honesty, whose unvarying constancy is venerated by the Gallican church, could be deceived by the man to such an extent that even to the present time he takes his part as a compurgator, cherishes and protects him, and is almost the only one in the world to believe good of him, although an almost universal sentiment condemns such a favorable opinion.

* I. e., the bishop of Lyons.

5. PUNISHMENT FOR PERJURY.

Lex Fris., xiv, 3, M.G. LL., III, p. 668. Latin. About 800.

As the efficiency of the whole system of compurgation depended upon the confidence that could be placed by the court in the word of the oath-helpers, it was necessary to make the penalty for false swearing as severe as possible. The punishment for perjury varied in different codes. That mentioned in the Frisian law is here given.

He who seeks the composition for homicide,* let him swear on the relics of the saints that he will not accuse any one of this except those whom he suspects of the murder; and then let him accuse of homicide one, two, or even three or four or however many there may have been that wounded him who was killed. But, though there were twenty or thirty, yet no more than seven can be accused, and let each one of these who has been accused swear with his twelfth hand,† and after the oath let him show himself innocent by the judgment of God in the ordeal of boiling water. Let the one who swore first go first to the ordeal, and so on in order. He who shall be found guilty by the ordeal, let him pay the composition for homicide, and to the king double his *wer-gild*; let the others who were his oath-helpers pay the fine for perjury as has been previously enacted.‡

6. REFORM OF INNOCENT III.

Corp. Jur. Can., cc. 5 and 13, Extra, V, 34. Latin.

Although by the 13th century compurgation had come to be looked upon with suspicion by royal judges, it yet continued for a long time an ordinary method of trial for the clergy. Innocent III. introduced certain reforms which did away with some of the dangers of perjury, but he thereby weakened the force of the oaths and dealt a mortal blow to the system.

We believe you are not ignorant of how many times the bishop of Trent has been accused of simony. But the accusers though producing a writing were unable to bring forward witnesses according to canonical form to prove that he had given the church of St. Peter to the presbyter P. for four measures of corn. We decree to the common council of our brethren that he ought to purge himself of the aforesaid simony with three of his own order and four abbots and regular priests. Now the manner of purgation shall be as follows: First, the bishop shall swear on God's sacred Gospel that, for giving the church of St.

* In the case of a man killed in a crowd.

† I. e., with eleven compurgators.

‡ This fine consisted of a single *wer-gild* each. Vid. Tit. X, eadem lege.

Peter to the presbyter P., he has received no price personally or by the hand of a subordinate, nor to his knowledge has any one accepted anything for him. Then the compurgators shall swear upon God's holy Gospel that they believe he has spoken the truth.

But those who are brought forward to purge another of infamy are held to affirm this alone by their oaths; namely, that they believe that he who is being purged speaks the truth.

II. JUDGMENTS OF GOD—ORDEALS.

I. FORMULA FOR CONDUCTING THE ORDEAL OF BOILING WATER.*

From the breviary of Eberhard of Bamberg, ed. Zeumer in M.G. LL., Sec V, Formule, p. 650. Latin. 12th or 13th century.

Let the priest go to the church with the prosecutors and with him who is about to be tried. And while the rest wait in the vestibule of the church let the priest enter and put on the sacred garments except the chasuble and, taking the Gospel and the chrismarium and the relics of the saints and the chalice, let him go to the altar and speak thus to all the people standing near: Behold, brethren, the offices of the Christian religion. Behold the law in which is hope and remission of sins, the holy oil of the chrisma, the consecration of the body and blood of our Lord. Look that ye be not deprived of the heritage of such great blessing and of participation in it by implicating yourselves in the crime of another, for it is written, not only are they worthy of death who do these things, but they that have pleasure in them that do them.†

Then let him thus address the one who is to undertake the ordeal: I command thee, N., in the presence of all, by the Father, the Son, and the Holy Ghost, by the tremendous day of judgment, by the ministry of baptism, by thy veneration for the saints, that, if thou art guilty of this matter charged against thee, if thou hast done it, or consented to it, or hast knowingly seen the perpetrators of this crime, thou enter not into the church nor mingle in the company of Christians unless thou wilt confess and admit thy guilt before thou art examined in public judgment.

Then he shall designate a spot in the vestibule where the fire is to be made for the water, and shall first sprinkle the place with holy

* This may be taken as a fair example of ordeal formulæ in general, as they were all of a similar nature.

† Rom. i. 32.

water, and shall also sprinkle the kettle when it is ready to be hung and the water in it, to guard against the illusions of the devil. Then, entering the church with the others, he shall celebrate the ordeal mass. After the celebration let the priest go with the people to the place of the ordeal, the Gospel in his left hand, the cross, censer and relics of the saints being carried ahead, and let him chant seven penitential psalms with a litany.

Prayer over the boiling water : O God, just Judge, firm and patient, who art the Author of peace, and judgest truly, determine what is right, O Lord, and make known Thy righteous judgment. O Omnipotent God, Thou that lookest upon the earth and makest it to tremble, Thou that by the gift of Thy Son, our Lord Jesus Christ, didst save the world and by His most holy passion didst redeem the human race, sanctify, O Lord, this water being heated by fire. Thou that didst save the three youths, Sidrac, Misac, and Abednago, cast into the fiery furnace at the command of Nebuchadnezzar, and didst lead them forth unharmed by the hand of Thy angel, do Thou O clement and most holy Ruler, give aid if he shall plunge his hand into the boiling water, being innocent, and, as Thou didst liberate the three youths from the fiery furnace and didst free Susanna from the false charge, so, O Lord, bring forth his hand safe and unharmed from this water. But if he be guilty and presume to plunge in his hand, the devil hardening his heart, let Thy holy justice deign to declare it, that Thy virtue may be manifest in his body and his soul be saved by penitence and confession. And if the guilty man shall try to hide his sins by the use of herbs or any magic, let Thy right hand deign to bring it to no account. Through Thy only begotten Son, our Lord Jesus Christ, who dwelleth with Thee.

Benediction of the water : I bless thee, O creature of water, boiling above the fire, in the name of the Father, and of the Son, and of the Holy Ghost, from whom all things proceed ; I adjure thee by Him who ordered thee to water the whole earth from the four rivers, and who summoned thee forth from the rock, and who changed thee into wine, that no wiles of the devil or magic of men be able to separate thee from thy virtues as a medium of judgment ; but mayest thou punish the vile and the wicked, and purify the innocent. Through Him whom hidden things do not escape and who sent thee in the flood over the whole earth to destroy the wicked and who will yet come to judge the quick and the dead and the world by fire. Amen.

Prayer: Omnipotent, Eternal God, we humbly beseech Thee in behalf of this investigation which we are about to undertake here amongst us that iniquity may not overcome justice but that falsehood may be subjected to truth. And if any one seek to hinder or obscure this examination by any magic or by herbs of the earth, deign to bring it to naught by Thy right hand, O upright Judge.

Then let the man who is to be tried, as well as the kettle or pot in which is the boiling water, be fumed with the incense of myrrh, and let this prayer be spoken: O God, Thou who within this substance of water hast hidden Thy most solemn sacraments, be graciously present with us who invoke Thee, and upon this element made ready by much purification pour down the virtue of Thy benediction that this creature, obedient to Thy mysteries, may be endued with Thy grace to detect diabolical and human fallacies, to confute their inventions and arguments, and to overcome their multiform arts. May all the wiles of the hidden enemy be brought to naught that we may clearly perceive the truth regarding those things which we with finite senses and simple hearts are seeking from Thy judgment through invocation of Thy holy name. Let not the innocent, we beseech Thee, be unjustly condemned, or the guilty be able to delude with safety those who seek the truth from Thee, who art the true Light, who seest in the shadowy darkness, and who makest our darkness light. O Thou who perceivest hidden things and knowest what is secret, show and declare this by Thy grace and make the knowledge of the truth manifest to us who believe in Thee.

Then let the hand that is to be placed in the water be washed with soap and let it be carefully examined whether it be sound; and before it is thrust in let the priest say: I adjure thee, O vessel, by the Father, and the Son, and the Holy Ghost, and by the holy resurrection, and by the tremendous day of judgment, and by the four Evangelists, that if this man be guilty of this crime either by deed or by consent, let the water boil violently, and do thou, O vessel, turn and swing.

After this let the man who is to be tried plunge in his hand, and afterwards let it be immediately sealed up. After the ordeal let him take a drink of holy water. Up to the time of the decision regarding the ordeal * it is a good thing to mix salt and holy water with all his food and drink.

* A period of three days was allowed to elapse before the hand was examined.

2. ORDEAL OF HOT WATER UNDERTAKEN BY A PRIEST TO CONFUTE A HERETIC.

Gregory of Tours, in *Gloria Martyr.* c. 80, M.G. SS. Mer. I, p. 542. Latin.

An Arian presbyter disputing with a deacon of our religion made venomous assertions against the Son of God and the Holy Ghost, as is the habit of that sect. But when the deacon had discoursed a long time concerning the reasonableness of our faith, and the heretic blinded by the fog of unbelief continued to reject the truth, according as it is written, "Wisdom shall not enter the mind of the wicked," the former said: "Why weary ourselves with long discussions? Let acts approve the truth; let a kettle be heated over the fire and some one's ring be thrown into the boiling water. Let him who shall take it from the heated liquid be approved as a follower of the truth, and afterwards let the other party be converted to the knowledge of this truth. And do thou also understand, O heretic, that this our party will fulfil the conditions with the aid of the Holy Ghost; thou shalt confess that there is no discordance, no dissimilarity in the Holy Trinity." The heretic consented to the proposition and they separated after appointing the next morning for the trial. But the fervor of faith in which the deacon had first made this suggestion began to cool through the instigation of the enemy. Rising with the dawn he bathed his arm in oil and smeared it with ointment. But nevertheless he made the round of the sacred places and called in prayer on the Lord. What more shall I say? About the third hour they met in the market place. The people came together to see the show. A fire was lighted, the kettle was placed upon it, and when it grew very hot the ring was thrown into the boiling water. The deacon invited the heretic to take it out of the water first. But he promptly refused, saying, "Thou who didst propose this trial art the one to take it out." The deacon all of a tremble bared his arm. And when the heretic presbyter saw it besmeared with ointment he cried out: "With magic arts thou hast thought to protect thyself, that thou hast made use of these salves, but what thou hast done will not avail." While they were thus quarreling there came up a deacon from Ravenna named Iacintus and inquired what the trouble was about. When he learned the truth he drew his arm out from under his robe at once and plunged his right hand into the kettle. Now the ring that had been thrown in was a little thing and very light so that it was thrown about by the water as chaff would

be blown about by the wind; and searching for it a long time he found it after about an hour. Meanwhile the flame beneath the kettle blazed up mightily so that the greater heat might make it difficult for the ring to be followed by the hand; but the deacon extracted it at length and suffered no harm, protesting rather that at the bottom the kettle was cold while at the top it was just pleasantly warm. When the heretic beheld this he was greatly confused and audaciously thrust his hand into the kettle saying, "My faith will aid me." As soon as his hand had been thrust in all the flesh was boiled off the bones clear up to the elbow. And so the dispute ended.

3. HINCMAR'S DESCRIPTION OF THE COLD WATER ORDEAL.

De Divort. Lotharii, c. vi, in Migne: Patrologia, Vol. 125, col. 668, 669. Latin.

Now the one about to be examined is bound by a rope and cast into the water because, as it is written, each one shall be holden with the cords of his iniquity.* And it is evident that he is bound for two reasons; to wit, that he may not be able to practice any fraud in connection with the judgment, and that he may be drawn out at the right time if the water should receive him as innocent, so that he perish not. For as we read that Lazarus, who had been dead four days (by whom is signified each one buried under a load of crimes), was buried wrapped in bandages and, bound by the same bands, came forth from the sepulchre at the word of the Lord and was loosed by the disciples at his command; so he who is to be examined by this judgment is cast into the water bound, and is drawn forth again bound, and is either immediately set free by the judgment of the judges, being purged, or remains bound till the time of his purgation and is then examined by the court. . . . And in this ordeal of cold water whoever, after the invocation of God, who is the Truth, seeks to hide the truth by a lie, cannot be submerged in the waters above which the voice of the Lord God has thundered; for the pure nature of the water recognizes as impure and therefore rejects as inconsistent with itself such human nature as has once been regenerated by the waters of baptism and is again infected by falsehood.

* Prov. v. 22.

4. DOOM OF KING AETHELSTAN REGARDING THE ORDEAL OF RED-HOT IRON.

Thorpe's Ancient Laws of England, I, p. 226. Anglo-Saxon and Latin. Also Council. Greatanlea. can. vii and viii, in Harduin VI, col. 569. Latin. 928 A. D.

If any one shall have given pledge to undergo the ordeal of iron, let him go three days beforehand to the priest whose duty it is to bless him with the sign of the cross; and let him live upon bread, water, salt and herbs, and hear mass each one of the three days; and let him make his offering and go to the holy communion on the day when he is to be examined by the ordeal; and before he is examined let him swear that by the law of the realm he is innocent of the charge. . . . Concerning the ordeal we enjoin in the name of God and by the command of the archbishop and of all our bishops that no one enter the church after the fire has been brought in with which the ordeal is to be heated except the priest and him who is to undergo judgment. And let nine feet be measured off from the stake to the mark, by the feet of him who is to be tried. . . . And when the ordeal is ready let two men from each side go in and certify that it is as hot as we have directed it to be. Then let an equal number from both sides enter and stand on either side of the judgment place along the church, and let them all be fasting and abstinent from their wives on the preceding night. And let the priest sprinkle them all with water and let them bow themselves every one to the holy water and let the holy Gospel and the cross be given them all to kiss. And no one shall mend the fire any longer than the beginning of the hallowing, but let the iron lie on the coals until the last collect. Afterwards let it be placed on a frame, and let no one speak except to pray diligently to God, the Father Omnipotent, to deign to manifest His truth in the matter. And let the accused drink of the holy water and then let the hand with which he is about to carry the iron be sprinkled, and so let him go [to the ordeal]. Let the nine feet that were measured off be divided into three sections. In the first division let him hold his right foot, close to the stake. Then let him move his right foot across the second into the third division, where he shall cast the iron in front of him and hasten to the holy altar. Then let his hand be sealed up, and on the third day let examination be made whether it is clean or foul * within the wrapper. And whoever shall transgress these laws,

* A blister found on the hand was sufficient for conviction, in some cases at least. See Eng. Hist. Rev., III, p. 159.

be the ordeal of no worth in his case, but let him pay the king a fine of twenty shillings.

5. ORDEAL OF GLOWING PLOUGHSHARES UNDERGONE BY QUEEN EMMA.

Annales Winton. ann. 1043, in *Annales Monastici* II, pp. 23, 24. R. S. Latin.

This story, though evidently apocryphal,* was probably written about the end of the 12th century, and gives an idea of the ceremony as it was employed at that time.

The queen was brought at the king's command from Whewell to Winchester and throughout all the night preceding her trial she kept her vigil at the shrine of St. Swithin. . . . On the appointed day the clergy and the people came to the church and the king himself sat on the tribunal. The queen was brought before her son and questioned whether she was willing to go through with what she had undertaken. . . . Nine glowing ploughshares were placed on the carefully swept pavement of the church. After these had been consecrated by a short ceremony the queen's shoes and stockings were taken off; then her robe was removed and her cloak thrown aside, and, supported by two bishops, one on either side, she was led to the torture. The bishops who led her were weeping and those who were much more afraid than she were encouraging her not to fear. Uncontrollable weeping broke out all over the church and all voices were united in the cry "St. Swithin, O St. Swithin, help her!" If the thunder had pealed forth at this time the people could not have heard it, with such strength, with such a concourse of voices did the shout go up to Heaven that St. Swithin should now or never hasten to her aid. God suffers violence and St. Swithin is dragged by force from Heaven. In a low voice the queen offered this prayer as she undertook the ordeal: "O God, who didst free Susanna from the wicked elders and the three youths from the fiery furnace, from the fire prepared for me deign to preserve me through the merits of St. Swithin."

Behold the miracle! With the bishops directing her feet, in nine steps she walked upon the nine ploughshares, pressing each one of them with the full weight of her whole body; and though she thus passed over them all, she neither saw the iron nor felt the heat. Therefore she said to the bishops: "Am I not to obtain that which I especially sought? Why do you lead me out of the church when I ought to be tried within it?" For she was going out and yet did not realize that

* See Freeman, *Norman Conquest*, II, p. 568.

she had gone through the ordeal. To which the bishops replied as well as they could through their sobs: "O lady, behold, you have already done it; the deed is now accomplished which you think must yet be done." She gazed and her eyes were opened; then for the first time she looked about and understood the miracle. "Lead me," she said, "to my son, that he may see my feet and know that I have suffered no ill."

6. ORDEAL OF FIRE.

Raimond of Agiles, c. xviii. *Recueil des Hist. des Crois., Hist. Occ., Vol. III, p. 283.* Latin. Cf. also Fulk of Chartres, c. x, and Ralph of Caen, c. cviii.

When the Holy Lance was discovered by Peter Bartholomew at Antioch during the first crusade, doubts as to the genuineness of the relic were expressed by Boemund and his followers. To silence these Peter was compelled to undergo the ordeal of fire to prove that it was really the spear wherewith the side of our Lord had been pierced. Raimond of Agiles was a firm believer in the relic.

. . . . All these things were pleasing to us, and having enjoined on him [*i. e.*, Peter Bartholomew,] a fast, we declared that a fire should be prepared upon the day on which the Lord was beaten with stripes and put upon the cross for our salvation. And the fourth day thereafter was the day before the Sabbath. So when the appointed day came round a fire was prepared after the noon hour. The leaders and the people to the number of 60,000 came together; the priests were there also with bare feet, clothed in ecclesiastical garments. The fire was made of dry olive branches, covering a space thirteen feet long; and there were two piles with a space about a foot wide between them. The height of these piles was four feet. Now when the fire had been kindled so that it burned fiercely, I, Raimond, in presence of the whole multitude, spoke: "If Omnipotent God has spoken to this man face to face, and the blessed Andrew has shown him our Lord's lance while he was keeping his vigil, let him go through the fire unharmed. But if it is false let him be burned together with the lance which he is to carry in his hand." And all responded on bended knees, "Amen." The fire was growing so hot that the flames shot up thirty cubits high into the air and scarcely any one dared approach it. Then Peter Bartholomew clothed only in his tunic and kneeling before the bishop of Albar called to God to witness "that he had seen Him face to face on the cross, and that he had heard from Him those things above written. . . ." Then when the bishop had placed the lance in his hand, he knelt and made the sign of the cross and entered the

fire with the lance, firm and unterrified. For an instant's time he paused in the midst of the flames, and then by the grace of God passed through. . . . But when Peter emerged from the fire so that neither his tunic was burned nor even the thin cloth with which the lance was wrapped up had shown any sign of damage, the whole people received him after that he had made over them the sign of the cross with the lance in his hand and had cried, "God aid us!" All the people, I say, threw themselves upon him and dragged him to the ground and trampled on him, each one wishing to touch him or to get a piece of his garment, and each thinking him near some one else. And so he received three or four wounds in the legs where the flesh was torn away, his back was injured and his sides bruised. Peter had died on the spot, as we believe, had not Raimond Pelet, a brave and noble soldier, broken through the wild crowd with a band of friends and rescued him at the peril of their lives. . . . After this * Peter died in peace at the hour appointed to him by God, and journeyed to the Lord; and he was buried in the place where he had carried the lance of the Lord through the fire.†

7. ORDEAL OF THE CROSS.

(a) Capitulary of Charles the Great.

Charta divis., c. 14, Baluze: *Capitularia I*, col. 309. Latin.

In the ordeal of the cross the two litigants were placed standing before a crucifix with their arms outstretched. The one who was able to maintain this position the longer won his case. This is the only form of ordeal in which both parties to the litigation were subjected to the same test. Consequently it partakes more of the nature of a duel, and does not leave so wide a discretion to the court.

If a dispute, contention, or controversy shall arise between parties regarding the boundaries or limits of their kingdoms of such a nature that it cannot be settled or terminated by human evidence, then we desire that for the decision of the matter the will of God and the truth of the dispute may be sought by means of the judgment of

* Twelve days later.

† A great controversy arose as to the cause of his death, his friends ascribing it to his rough treatment after the ordeal, his enemies declaring that it was due to the burns he had received. From the statement of the anonymous author of an abridgement to Fulk of Chartres to the effect that Peter did not live through two weeks following the ordeal, but died on the twelfth day, it would seem that a fortnight was the period fixed by law within which the judgment of God was expected to manifest itself. *Gesta Franc. Iherusalem expugnantium*, c. XXVI.

the cross, nor shall any sort of battle or duel ever be adjudged for the decision of any such question.

(b) Capitulary of Louis le Débonnaire.

Capit. Eccl., ann. 818, c. 27. M.G. LL., vol. I, p. 209. Latin.

It is enacted that hereafter no one shall presume to undertake any sort of ordeal of the cross; lest that which was glorified by the passion of Christ should be brought into contempt through any one's temerity.

8. DISTRUST OF ORDEAL SHOWN BY LAW OF HENRY II.

Assize of Clarendon, § 14, in *Gesta Heinrici II.*, II, p. clii, R. S. Latin.

Also the lord king wishes that those who shall make their law * and shall be acquitted by the law, if they be of very bad repute and evilly defamed by the testimony of many legal men, shall abjure the realm, so that within eight days they shall cross the sea unless the wind shall detain them; and with the first wind they shall have thereafter they shall cross the sea; and moreover they shall not return to England except by the grace of the king; and there let them be outlawed. And if they return let them be seized as outlaws.

9. ABOLITION OF ORDEALS.

(a) Decree of Innocent III.

Corp. Jur. Can., c. 9, Extra, III, 50 (Can. 18, Conc. Lateran. IV, ann. 1215). Latin.

Also let no ecclesiastic be placed in command of low soldiery, or bowmen, or men of blood of that sort, nor let any subdeacon, deacon, or priest practice any office of surgery which requires burning or cutting. Nor let any one pronounce over the ordeal of hot or cold water or glowing iron any benediction or rite of consecration, regard being also paid to the prohibitions formerly promulgated respecting the single combat or duel.

(b) Instructions of Henry III. to his judges in 1219.

Rymer's *Foedera* (old ed.), I, p. 228. Latin.

The king to his beloved and faithful Philip de Ulletot and his fellow judges traveling in the counties of Cumberland, Westmoreland, and Lancaster, greeting: Since it was doubtful and undetermined at the beginning of your eyre by what sort of judgment they ought to be

* I. e., who shall be admitted to the ordeal.

brought to trial who were accused of theft, murder, incendiarism, and similar crimes, inasmuch as the Roman Church has prohibited the judgment of fire and water, it is enacted by our council that in this your eyre the matter be thus conducted for the present in regard to those accused of such excesses. To wit, that those accused of the aforesaid major crimes, who may be strongly suspected of being guilty and regarding whom the suspicion might still be entertained that they would do harm should they be allowed to abjure the realm; that such persons should be retained in our prison and guarded carefully that they may incur no danger of life or limb by occasion of our prison. But those who may be accused of moderate crimes, in whose cases the ordeal of fire or water would have been applicable had it not been prohibited, and who are not suspected of being liable to do harm afterwards if they should abjure our realm, let them abjure the realm. As to those, however, who may be accused of minor crimes, and who are not held in suspicion, let them give sure and sufficient pledge of fidelity and intention to keep the peace and so let them be dismissed.

Since, therefore, our council has provided nothing more definite in this matter, we leave to your discretion to observe the aforesaid regulation, so that you who are better able to recognize the persons of the men, the form of the crime and the truth of the matter itself may proceed in this according to your conscience and discretion.

(c) Edict of Pope Honorius in 1222 renewing the prohibition of the ordeal.

Corp. Jur. Can. (ed. Friedberg), c. 3, Extra, V, 35. Latin.

Our beloved sons recently baptized in Livonia have addressed a serious complaint to us that the Teutonic Knights of Livonia and certain other advocates and judges who exercise temporal power in the country, if ever the inhabitants are accused of any sort of crime, compel them to undergo the judgment of red-hot iron; and if they suffer any burns from this, they inflict civil penalties on them much to the scandal and terror of the converts and of those about to be converted. Since, therefore, this sort of judgment has been utterly forbidden by legitimate and canonical decrees, inasmuch as God appears thereby to be tempted, we command thee that, setting aside any appeal, and warning them by ecclesiastical censure, thou shouldst compel the said brothers and others to desist from all similar oppression of the converts.

10. LAW OF FREDERIC II. AGAINST THE ORDEAL.

Const. Sicular., Lib. II, Tit. 31. Huillard-Bréholles: Hist. Dip. Frid., II, vol. IV, part I, p. 102. Latin.

The laws which are called by certain ingenuous persons *paribiles*,* which neither regard nature nor give heed to the truth, We, who investigate the true science of laws and reject their errors, abolish from our tribunals; forbidding by the edict published under sanction of our name all the judges of our kingdom ever to impose on any of our faithful subjects these *paribiles* laws, which ought rather to be called laws that conceal the truth; but let them be content with ordinary proofs such as are prescribed in the ancient laws and in our constitutions. Indeed, we consider that they deserve ridicule rather than instruction who have so little understanding as to believe that the natural heat of red-hot iron grows mild, nay (what is more foolish), even turns to coldness without the working of an adequate cause; or who assert that on account of a troubled conscience alone a criminal does not sink into the cold water, when rather it is the holding in of sufficient air that does not allow of his being submerged.†

III. JUDGMENTS OF GOD—WAGER OF BATTLE.

The practice of appealing to the judgment of God to settle questions which it transcended man's wisdom to decide is of prehistoric origin. When the Germans invaded the empire a great impetus was given this custom by the resulting complications in legal relations. The theory of the personality of the law made it difficult, if not impossible, to equitably decide questions arising between subjects of two different races by any other method than an appeal to divine justice, and hence we find the ordeal and wager of battle greatly extended and its procedure adopted and systematized by the church. In this way the latter obtained great influence over the minds of the barbarians, and added largely to its power and revenues by assuming control of the administration of justice. The ordeal continued to flourish until the 13th century, when the developing national monarchies gradually forced it to give way. The papal influence, likewise thrown on the side of the reform, materially aided the movement in spite of the opposition of the local clergy. The wager of battle, however, though even more strenuously opposed by the church, did not meet with the same hostility from the secular authorities, and is to be met with occasionally as late as the 16th century. In England it was not formally abolished until 1819.

* *Lex paribilis*, from a duel or combat of peers or champions. Ducange.

† This last clause is supposed to refer to some artifice whereby those conducting the ordeal secured a conviction when they so desired.

I. EXAMPLE OF JUDICIAL DUEL IN GERMANY.*

Wiponis Vita Chuonradi Imp., c. 33, ann. 1033. M.G. SS., XI, p. 271.

The emperor having levied a force in Saxony marched upon the Luitzes,† a people who were formerly half Christians but who have wickedly apostatized and are now become thorough pagans. In their district he put an end to an implacable strife in a wonderful manner. Between the Saxons and the pagans at that time fighting and raids were being carried on incessantly, and when the emperor came he began to inquire which side had first broken the peace that had long been observed inviolate between them. The pagans said that the peace had been disturbed first by the Saxons, and they would prove this by the duel if the emperor would so direct. On the other side the Saxons pledged themselves to refute the pagans in like manner by single combat, though as a matter of fact their contention was untrue. The emperor after consulting his princes permitted the matter to be settled between them by a duel, though this was not a very wise act. Two champions, each selected by his own side, immediately engaged. The Christian, trusting in his faith alone, though faith without the works of justice is dead, began the attack fiercely without diligently considering that God, who is the Truth, who maketh His sun to shine upon the evil and the good, and the rain to fall upon the just and the unjust, decides all things by a true judgment. The pagan on the other hand resisted stoutly, having before his eyes only the consciousness of the truth for which he was fighting. Finally the Christian fell wounded by the pagan. Thereupon his party were seized with such elation and presumption that, had the emperor not been present, they would forthwith have rushed upon the Christians; but the emperor constructed the fortress Werben in which he placed a garrison of soldiers to check their incursions and bound the Saxon princes by an oath and by the imperial commands to a unanimous resistance against the pagans. Then he returned to Franconia.‡

* For a good example of the judicial duel under Otto I. see Widukind, Saxon Chronicle, ann. 938, trans. in Emerton's *Introduction to the Middle Ages*, p. 83.

† A Wendish tribe living on the east side of the river Elbe.

‡ For a discussion of this incident see *Jahrbücher d. deutschen Geschichte*, Konrad II., II, 94 sq.

2. THE JUDICIAL COMBAT IN SPAIN.

Rodericus Toletanus, Lib. VI, c. 26. Bel: Rerum Hispanic. Script., I, p. 241. Latin. 13th century.

The old Gothic or Mozarabic ritual long preserved its place in the churches of Spain, but Gregory VII. on his accession determined to substitute the Roman in place of the old national service in Castile and Leon. The supporters of the papal policy were not at first able to carry their point by means of argument, and resort was had to single combat between champions, one representing the Roman, the other the Gothic ritual.*

But before the recall [of the legate Richard] the clergy and people of all Spain were thrown into confusion by being compelled by the legate and the prince to accept the Gallic ritual. On an appointed day the king, the primate, the legate, the clergy, and a vast multitude of people came together and a long altercation took place, the clergy, soldiery and people firmly resisting a change in the service, the king, under the influence of the queen, supporting the change with threats and menaces. Finally the demands of the soldiers brought matters to such a crisis that it was decided to settle the dispute by a duel. When two soldiers had been selected, one by the king, who contended for the Gallic ritual, the other by the soldiery and people, who were equally zealous for the ritual of Toledo, the king's champion was defeated on the spot to the exultation of the people, because the victor was the champion of the Toledo service. But the king was so far persuaded by queen Constantia that he did not recede from his demands, adjudging the duel to be of no weight. . . . And when thereupon a great tumult arose among the soldiers and the people, it was finally decided that a copy of the Toledo ritual, and one of the Gallic should be placed in a great fire. When a fast had been imposed upon all by the primate, legate, and clergy, and all had devoutly prayed, the Gallic office was consumed by the fire, while the Gothic leaped up above the flames and was seen by all who stood there praising the Lord to be wholly uninjured and untouched by the fire. But since the king was obstinate and stiff-necked he would not turn aside either through fear of the miracle or through supplication of the people, but, threatening confiscation and death against those who resisted, he ordered the Gallic office to be adopted in all his dominions. Whence arose from the grief and sorrow of all the proverb, *Quo volunt Reges, vadunt Leges*.

* See Hefele, Conciliengeschichte, V, pp. 158 and 200.

3. LAW OF FREDERIC II. ABOLISHING WAGER OF BATTLE IN SICILY.

Const. Sicular., Lib. II, Tit. 33. H.-Bréholles: Op. cit., vol. IV, part I, p. 105. Latin.

We will that the single combat, or duel, as it is commonly called, shall never be adjudged between men subject to our jurisdiction, except in a few specified cases; for it cannot be called so much a real proof as a sort of divination, which is not in accord with nature but is opposed to universal law and inconsistent with just reason. For it is almost if not quite impossible for two champions to come together so equally matched that the one is not wholly superior to the other in strength or does not excel him in some other way by greater vigor and courage or at least in cleverness. But we exclude from the benefit of this humane edict murderers who are charged with having caused the death of others by using poison or some other secret means; and even against these we do not sanction the wager of battle at the beginning of the trial, but command that ordinary proofs be first adduced against them if there be any such at hand, and that only then, as a last resort, when the crime cannot be fully established by other proofs after a thorough investigation by the officials of the court, resort may be had to the judgment of battle to decide the above charges: and we wish all these things to be arranged through the medium of a judge fully cognizant of the proceedings, that he may carefully and diligently investigate the proofs brought out by the inquisition. And if the charges shall not be proved as stated let him grant the accuser permission to offer battle, if nothing was brought out in court prejudicial to the accuser's right. But if the accuser should first offer to prove the crime by witnesses and their testimony should be insufficient, the trial shall not take place by the double method of inquisition and battle, but the defendant, not being convicted of guilt and being presumably innocent, shall be set free; because we wish the same law to be observed among all, both Franks and Lombards, and in all cases. In our new constitution, indeed, wager of battle has been sufficiently recognized in the case of the knights and nobles of our kingdom and of others who are able to offer battle. For we except the crime of treason, respecting which we preserve the judicial duel. Nor is it strange if we subject traitors, secret murderers and poisoners to the duel (though not so much as a method of judgment as to terrify them); not because our Serenity deems that just in their case which it has declared unjust in others, but because we desire that such homicides

as have not feared to lay secret plots against human life, which God's power alone can call into existence, should be publicly subjected to this terrible method of proof in the sight of all men as a punishment and an example to others. Those also we exclude from the terms of our leniency who do not hesitate to plot against our peace in which the peace of all the rest is involved.

IV. EXCOMMUNICATION.

The church as a voluntary organization had from the beginning exercised the right of excluding from its membership those who did not conform to its standards, but it was not until Cyprian's time that this came to be generally looked upon as equivalent to exclusion from salvation. As the theory of the church's true mission developed in the minds of its leaders, the field of excommunication rapidly expanded and the tone of its priesthood grew more certain. This change is well shown by comparing St. Ambrose's mild remonstrance against Theodosius with the haughty attitude of the popes of the 12th and 13th centuries, and by noting how the state was compelled to support by civil penalties the sentence of the church. Finally excommunication came to be looked upon as little more than a ban or curse which could be employed by the clergy to avenge their private wrongs, to strengthen contracts, or even to punish animals or demons. The abuses to which the system gave rise became so great that even before the Reformation the censure had lost much of its force, and since that time it has been less and less employed.

I. ST. CYPRIAN ON THE NECESSITY OF MEMBERSHIP IN THE CHURCH.

De Unitate Ecclesiæ, § 6, in Migne, Pat. Lat., vol. IV, col. 502, 503.

The spouse of Christ cannot be an adulteress, she is uncorrupted and pure. She knows but one house, she watches over the sanctity of one couch with chaste modesty. She preserves us for God; she confers the kingdom on the son whom she has brought forth. Whosoever separates himself from the church and is joined to an adulteress is separated from the promises of the church; nor will he attain to the rewards of Christ who deserts Christ's church. He is an alien, he is profane, he is an enemy. He can no longer have God for his father who has not the church for his mother. If any one could escape who was outside the ark of Noah, so also may he escape who shall be outside the bounds of the church.

2. ST. AMBROSE'S THREAT OF EXCOMMUNICATION AGAINST THEODOSIUS.

Epist. LI, §§ 11-13, in Migne, Pat. Lat., vol. XVI, col. 1162, 1163. Latin.

I have written these things, indeed, not to confound you, but that the example of these kings might induce you to put away this sin from

your kingdom, which you will accomplish by humiliating your soul to God. You are a man and temptation has come to you; confess it. Sin is not put away except by tears and penitence. Neither an angel can do it nor an archangel; the Lord himself, who alone can say, "I am with you," does not forgive us if we have sinned except we be penitent.

I persuade, I beg, I exhort, I admonish; because it is a grief to me that you who were an example of unusual piety, who were the very personification of clemency, who would not allow guilty individuals to be brought into danger, that you do not grieve at the death of so many innocent persons. Although you have fought battles most successfully, although in other things also you are worthy of praise, yet the crown of all your work was always piety. This the devil envied you, since it was your ever-present possession. Conquer him while as yet you have wherewith you may conquer. Do not add another sin to your sin, that you may practice what it has injured many to practice.

I, indeed, though in all other things a debtor to your kindness which I can never be ungrateful for, which kindness surpassed that of many emperors and was equaled by the kindness of one only, I, I say, have no cause for a charge of contumacy against you, but I have a cause for fear; I dare not offer the sacrifice if you will to be present. Is that which is not allowed after shedding the blood of one innocent person to be allowed after shedding the blood of many? I do not think so.

3. STATE AID IN THE ENFORCEMENT OF EXCOMMUNICATION.

(a) Law of Lothair I. in 824.

Leges Langobard. cap. 15, M.G. LL., IV, p. 542. Latin.

It had always been the policy of the Carolingians to enforce the decrees of the church, but this is the first general direction to counts to assist the bishops with secular penalties.

It is our will, so often as any person shall be brought to trial for any crimes or misdemeanors and his contumacy shall render him liable even to the episcopal excommunication, that the bishop shall associate with himself the count of his district so that the obstinate offender may be forced by the united action of both to render obedience to the command of the bishop. If he does not obey let him pay us our fine; but if he still remains contumacious let him be excommunicated by the bishop. Then if he shall refuse to amend his ways after being excommunicated, let him be bound and imprisoned by the count until we

render our judgment against the hardened offender. If, however, it be the count who is the guilty party, let his bishop report him to us; and if the culprit be an imperial vassal, let the count proceed against him as above directed; but if he will not hear, let him be reported to us before he is cast into prison.

(b) Enactment of Frederic II. in 1220.

Confœderatio cum Princip. Ecclesiast., §§ 6-8, M.G. LL., II, p. 236. Latin.

Also we will avoid the company of excommunicated persons, as it is right we should do, provided that they are denounced to us by word of mouth or by letters or by messengers worthy of confidence; and unless absolution be previously granted we will not concede them any standing in our courts: this distinction, however, being made, that excommunication shall not hinder them from appearing as defendants, though without advocates; but it shall take away from them the right and power of acting as judges or witnesses, or of bringing suit against others.

And since the temporal sword was made subsidiary to the spiritual, if it be made known to us in any of the foregoing ways that the excommunicates have persisted in their contumacy for more than six weeks, our proscription shall be added to the excommunication, nor is it to be withdrawn unless the excommunication be previously recalled.

So in this manner and in all other ways, that is to say, by just and efficacious judgment, we have solemnly promised to aid and defend them [the clergy], and they on their side have pledged their faith to assist us to the extent of their power against any man who may offer violent resistance to any such judgment of ours.

4. EXCOMMUNICATION OF FREDERIC II. BY INNOCENT IV. AT THE COUNCIL OF LYONS, 1245.

Harduin, *Concilia*, VII, col. 385, 386. Latin.

[Innocent recapitulates the efforts of the popes to maintain peace between the church and the empire and dwells upon the sins of the emperor. Then, after charging him with the particular crimes of perjury, sacrilege, heresy, and tyranny, he proceeds as follows:—We, therefore, on account of his aforesaid crimes and of his many other nefarious misdeeds, after careful deliberation with our brethren and with the holy council, acting however unworthily as the vicar of Jesus Christ on earth and knowing how it was said to us in the person of the

blessed apostle Peter, *Whatsoever ye shall bind on earth shall be bound in heaven*; We announce and declare the said prince to be bound because of his sins and rejected by the Lord and deprived of all honor and dignity, and moreover by this sentence we hereby deprive him of the same since he has rendered himself so unworthy of ruling his kingdom and so unworthy of all honors and dignity; for, indeed, on account of his iniquities he has been rejected of God that he might not reign or exercise authority. All who have taken the oath of fidelity to him we absolve forever from such oath by our apostolic authority, absolutely forbidding any one hereafter to obey him or look upon him as emperor or king. Let those whose duty it is to select a new emperor proceed freely with the election. But it shall be our care to provide as shall seem fitting to us for the kingdom of Sicily with the council of our brothers, the cardinals.

5. COMMUNATORY CLAUSE FROM A CHARTULARY OF THE ABBEY OF ST. PETER OF CHARTRES, 988 A. D.

Found in Giry, *Manuel de Diplomatique*, p. 564.

It was usual for mediæval legal documents, and especially for deeds of gift, to contain clauses excommunicating *latae sententiae* any who might venture to infringe in any way upon the provisions contained in the document.

Now if any one shall think to infringe on this deed of gift or bring a false action against it, may he be seized with jaundice and smitten with blindness; may he bring his present life to a miserable ending by a most wretched death and undergo everlasting damnation with the devil, where bound with red-hot chains, may he groan forever and ever, and may the worm that never dies feed on his flesh, and the fire that cannot be quenched be his food and sustenance eternally.

6. FORMULA OF EXCOMMUNICATION OF ANIMALS.

Found in Du Cange, *Glossarium*, s. v. *Excommunicatio*.

Examples of the excommunication of animals are not met with frequently in mediæval records, and then usually only in remote and unenlightened districts. They show, however, the tendency of excommunication to become a mere curse or magic rite, and emphasize one of the abuses of the system which gradually threw discredit upon it and caused the church to restrict it to narrower limits.

In the name of the Lord, Amen. Complaint having been made in court by the inhabitants of Villenoce in the diocese of Troyes against the locusts and caterpillars and other such animals, called in the vulgar tongue *Hurebecs*, that have laid waste the vineyards of that place for

several years, and continue to do so, as is asserted on the testimony of credible witnesses and by public rumor, to the great detriment of the inhabitants of that and neighboring regions; and their request having been considered that the aforesaid animals should be warned by us and compelled by threats of ecclesiastical punishment to depart from the territory of said town, etc. We, by the authority that we exercise in this region, warn the aforesaid locusts, caterpillars and other animals, under whatsoever name known, by these presents, under threat of curses and excommunication to depart from the vineyards and land of the said town of Villenoce by virtue of this sentence within six days from the publication of this warning and to do no further injury either there or elsewhere in the diocese of Troyes. But, if the above mentioned animals do not implicitly obey this our warning within the specified time, then at the expiration of the six days by virtue of our said authority we excommunicate them through this document and curse them by the same.

7. DECLARATION OF 1682 BY LOUIS XIV.

Given in Michaud, Louis XIV. et Innocent XI., T. IV, p. 68. French.

Inasmuch as St. Peter and his successors, the vicars of Jesus Christ, and even the whole church, have received power from God only over spiritual things which concern salvation, and not at all over temporal and civil affairs, since Jesus Christ Himself teaches that His kingdom is not of this world and that we should *render unto Cæsar the things which are Cæsar's and unto God the things that are God's*; and since, likewise, this precept of the apostle Paul can in no way be altered or called into question: *Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power resisteth the ordinance of God.* Therefore we declare that princes and kings are not subject by God's command to any ecclesiastical power in temporal things; that they cannot be deposed either directly or indirectly by the authority of the heads of the church; that their subjects cannot be granted dispensation to refuse the allegiance and obedience which they owe, or absolved from the oath of fidelity; and that this doctrine indispensable to public peace and not less advantageous to the church than to the state, must be invariably followed as conforming to the Word of God, to the traditions of the holy Fathers, and to the example of the saints.

V. INTERDICT.

Interdict is a censure that deprives the faithful of the use of most of the sacraments, of participation in the celebration of the divine offices, and of ecclesiastical sepulture. It is differentiated from excommunication in that it does not entail segregation or exclusion from church membership, so that those on whom it is laid are not thereby handed over to Satan. It was employed especially to coerce princes, as it was the most effective means of exciting public indignation and arousing a people against its ruler. The interdict grew out of a wide use of excommunication, and was first employed by the clergy of northern France in the turbulent period following the extinction of the Carolingian dynasty. At first it was looked upon with little favor by the popes, but by the beginning of the 12th century they had adopted it as one of their most effective instruments in dealing with the European states. The wide range of the papal activity tended to bring the censure more and more into use as a political weapon, and at length it ceased almost entirely to be employed as a punishment for immorality. As the censure became thus secularized its influence decreased, until finally the state, relying upon the loyalty of its citizens, took advantage of their indifference to spiritual punishments and dared openly to defy the papal commands. The last important instance of its use was when the pope laid an interdict on Venice in 1606. By that date it was felt to be an anachronism; it had not been previously employed for a long time, and owing to its complete failure in this case it was henceforth little used. Since then only a few instances of interdict have been known, occurring mostly in Spain and Spanish America.*

I. ENACTMENT OF THE COUNCIL OF LIMOGES IN 1031.†

Harduin, *Concilia*, VI, col. 885, 886. Latin.

If they do not keep the peace lay the whole territory of Limoges under a public excommunication: ‡ to wit, in such manner that no one unless a priest or a beggar or a traveler or an infant of two years or less may be buried in all Limoges or be carried into another diocese for burial. Let divine service be celebrated secretly in all the churches, and let baptism be given those that seek it. About the third hour let the bells be sounded in all the churches and let all, throwing themselves prone on the ground, pour forth prayers for peace because of their tribulation. Let confession and the viaticum be

* For a vivid description of the workings of an interdict see Hurter's *Innocenz III.*, I, p. 348 ff. This is not an account of a real interdict, but a mosaic made by piecing together the provisions of many censures.

† This measure was proposed as a punishment for any infractions of the Peace of God on the part of the nobles.

‡ It will be observed that the technical use of the word interdict had not yet been adopted.

allowed in the extremity of death. Let the altars in all the churches be stripped, as on Good Friday; and let the crucifixes and ornaments be veiled as a sign of sorrow and mourning to all. Let each priest celebrate the mass behind locked doors, and then only may the altars be decorated, to be stripped again at the close of the service. Let no one marry him a wife during the continuance of this excommunication. Let no one give another a kiss. Let no one in all Limoges either of the clergy or of the laity, whether sojourners in the land or travelers, eat meat or any other food except what is allowed in Lent. Let no one of the clergy or of the laity have his hair cut or be shaved, until such time as the barons, the leaders of the people, show obedience to the holy council in all things. And if it shall be proved that any one has violated this law let him not be received except after fitting penance. For the excommunication of the bishops is to be especially observed lest perchance the wrath of the Lord should fall upon us and upon the people.

2. INTERDICT LAID IN NORMANDY IN 1137.

Ordericus Vitalis, Hist. Eccl., Lib. XIII, c. 28, ed. Le Prevost, vol. V, p. 79. Latin.

This interdict was laid to "terrify and restrain the perverse and disorderly inhabitants," who in the anarchy following the death of Henry I. ravaged and plundered each other's land to an almost incredible extent.

And now a still more serious misfortune threatened Normandy with many kinds of evil. In the bishopric of Séez an anathema * was laid on all the lands of William Talvas, and there was no longer heard the sweet chant of divine service, a sound that calms and gladdens the hearts of the faithful. The people were forbidden to enter the churches for the purpose of worshipping God, and the doors were locked. The music of the bells was silenced and the bodies of the dead lay unburied and putrifying, striking the beholders with fear and horror. The pleasures of marriage were denied to those desiring them and the solemn joys of the church services were no longer known. In the diocese of Evreux also a like discipline was inflicted, which hardly restrained by its terrors the disorders in the territory of Roger de Toëni.

* In one MS. it is spoken of as papal anathema.

3. INTERDICT ON FRANCE IN 1200.

Martène, *Thesaurus Anecdot.*, IV, p. 147. Latin.

In 1193 Philip Augustus married Ingeburg of Denmark, but divorced her on the very day following the ceremony. Pope Innocent III. refused to sanction the decree, and when, three years later, Philip married Agnes of Meran he found the whole power of Rome directed against him. He refused to yield, and finally in 1200 the pope laid all France under the interdict from January to September, when the king was forced to give way. See Geraud, "Ingeburge de Danemark," in *Bibliothèque de l'École des Chartes*, T. I., 2d series, pp. 1-27 and 93-118.

Let all the churches be closed; let no one be admitted to them except to baptize infants; let them not be otherwise opened except for the purpose of lighting the lamps, or when the priest shall come for the Eucharist and holy water for the use of the sick. We permit mass to be celebrated once a week on Friday early in the morning to consecrate the Host for the use of the sick, but only one clerk is to be admitted to assist the priest. Let the clergy preach on Sunday in the vestibules of the churches, and in place of the mass let them disseminate the word of God. Let them recite the canonical hours outside the churches, where the people do not hear them; if they recite an epistle or a gospel let them beware lest the laity hear them; and let them not permit the dead to be interred, nor their bodies to be placed unburied in the cemeteries. Let them, moreover, say to the laity that they sin and transgress grievously by burying bodies in the earth, even in unconsecrated ground, for in so doing they arrogate to themselves an office pertaining to others. Let them forbid their parishioners to enter churches that may be open in the king's territory, and let them not bless the wallets of pilgrims except outside the churches. Let them not celebrate the offices in Passion week, but refrain even till Easter day, and then let them celebrate in private, no one being admitted except the assisting priest, as above directed; let no one communicate even at Easter, except he be sick and in danger of death. During the same week, or on Palm Sunday, let them announce to their parishioners that they may assemble on Easter morning before the church and there have permission to eat flesh and consecrated bread. Women are expressly forbidden to be admitted into the churches for purification, but are to be warned to gather their neighbors together on the day of purification and pray outside the church, nor may the women who are to be purified enter even to raise their children to the sacred font of baptism until they are admitted by the priest after

the expiration of the interdict. Let the priest confess all who desire it in the portico of the church; if the church have no portico we direct that in bad or rainy weather, and not otherwise, the nearest door of the church may be opened and confessions heard on its threshold (all being excluded except the one who is to confess) so that the priest and the penitent can be heard by those who are outside the church.* If, however, the weather be fair, let the confession be heard in front of the closed doors. Let no vessels of holy water be placed outside of the church, nor shall the priests carry them anywhere, for all the sacraments of the church beyond these two which were reserved † are absolutely prohibited. Extreme unction, which is a holy sacrament, may not be given.

4. INTERDICT OF VENICE IN 1309.

Baronius' *Annales*, sub an. 1309, § 6. Latin.

The Venetians and the church having both laid claim to Ferrara the former proceeded to make good their rights by occupying the city with an armed force. The pope replied by laying an interdict on Venice and declaring all debts owing her citizens to be forfeited. Other countries were invited to attack her commerce, and Edward II. of England, with other rulers, took occasion to repudiate his Venetian debts. Owing to the attacks on her trade and banking Venice was forced to yield entirely to the pope's demands.

And since a just quarrel had arisen because of such great sin on the part of the doge of Venice and the Venetian senate he ‡ smote them with the anathema, especially mentioning by name Giovanni Soranzo who had wrested the domain of Ferrara away from the church, and Vitali Michieli who was ruling Ferrara in the name of the republic, and ordered them to restore the rule of the Roman church. He deprived all the Venetian territory of the use of the sacraments and of the rights of trade; he branded the magistrates with infamy and pronounced them deprived of the benefits and privileges of the law; and ordered ecclesiastics to leave the Venetian domains except such as were needed to baptize infants and to receive the confessions of the dying. Finally, if they persisted in their present course beyond the time fixed for submission, he pronounced the doge deprived of his authority and all the property of the Venetians confiscated, and de-

* Geraud remarks that this was almost equivalent to a formal prohibition of confession.

† I. e., infant baptism and the viaticum.

‡ Pope Clement V.

clared that the kings of Europe would be summoned to direct their arms against them until they should restore Ferrara to the church.

5. INTERDICT OF UTRECHT IN 1426.

Matthæus' edition of the *Cronica de Trajecto*, 2d ed., V, p. 456. Latin.

The growing use of the interdict for purely political purposes is here shown, and indicates the chief reason for the declining force of the censure.

Now it is remarkable that this decree should have been passed notwithstanding the fact that the pope had deprived the city of the sacraments and pronounced an interdict upon it on account of its having received Rudolph; especially if you consider that not only is nothing severer than a papal interdict, but that nothing is likelier to stir up the common people against their magistrates and superiors. For under such circumstances the churches are closed, there are no divine services, no chants are heard, nor is there mass, nor do the faithful assemble together. There are no sacraments there, or confession, no baptism of any except infants. Even burial is forbidden. All become the prey of Satan. The credulous people are persuaded that it is in the pope's power either to raise them to heaven or cast them down into hell. And yet neither the city nor the clergy paid any attention to these things. The pope's interdict was held in contempt and the clergy continued unhesitatingly to conduct divine services, especially after both the city and the nobles had promised to guard and protect them against all, even against the pope.

6. THE DOGE'S REPLY TO THE INTERDICT LAID ON VENICE IN 1606.

English translation found in Trollope's "Paul the Pope and Paul the Friar," pp. 381, 382.

Original Latin text in *Magnum Bullarium Romanum*, Tom. X (Ed. Luxemburgi, 1741), pp. 177, 178.

In his prolonged quarrel with Venice pope Paul V. attempted to compel the repeal of two obnoxious laws by laying an interdict on the city, but this last serious attempt of the papacy to enforce its decrees by a general censure broke down before the determined opposition of the republic.

Leonardo Donato, by the Grace of God doge of Venice, etc., etc., to the most reverend, the patriarchs, archbishops and bishops of all our Venetian domains, etc., etc., greeting:

It has come to our knowledge that on the 17th of April last past, by the order of the most holy father, Pope Paul V., there was published and posted up in Rome a so-called brief, which was fulminated against

us, our senate, and the whole of our state ; and that one was addressed to you, the tenor and contents whereof were similar to those of the other. We therefore find ourselves constrained to preserve in peace and tranquility the state which God has given us to rule ; and, in order to maintain our authority as a prince, who in temporal matters recognizes no superior saving the Divine Majesty, we, by these our public letters, do protest before the Lord God and the whole world that we have not failed to use every possible means to make his Holiness understand our most valid and irrefragable case ; first, by means of our ambassador residing at the court of his Holiness ; then, by letters of ours in answer to briefs addressed to us by his Holiness ; and, lastly, by a special ambassador sent to him to this effect. But having found the ears of his Holiness closed against us and seeing that the brief aforesaid is published contrary to all right reason and contrary to the teaching of the divine Scriptures, the doctrine of the holy fathers, and the sacred canons, to the prejudice of the secular authority given us by God, and of the liberty of our state, inasmuch as it would cause disturbance in the quiet possessions which, by divine Grace, under our government our faithful subjects hold of their properties, their honor and their lives, and occasion a most grave and universal scandal throughout the state ; We do not hesitate to consider the said brief not only as unsuitable and unjust, but as null and void and of no worth or value whatever, and being thus invalid, vain, and unlawfully fulminated, *de facto nullo juris ordine servato*, we have thought fit to use in resisting it the remedies adopted by our ancestors and by other sovereign princes against such pontiffs as, in using the power given them by God to the use of edifying, have overstepped their due limits. . . . And we pray the Lord God to inspire him [the pope] with a sense of the invalidity and nullity of his brief and of the other acts committed against us, and that He, knowing the justice of our cause, may give us strength to maintain our reverence for the holy apostolic see, whose most devoted servants we and our predecessors, together with this republic, have been and ever shall be.

BIBLIOGRAPHICAL NOTE.

Lea, Henry C. : *Superstition and Force : Essays on the Wager of Law—the Wager of Battle—the Ordeal—Torture*. Philadelphia, 4th ed., 1892.

The best concise treatment in any language of the methods of mediæval legal procedure. The last edition of this work has been greatly enlarged by the author, who

has taken into account the researches of other modern scholars in this field, correcting and supplementing their views from the wealth of his own learning. No student, either of mediæval life and thought or of legal history, can afford to be without this book.

Patetta: Le Ordalie. Torino, 1890.

This is a full and judicious treatment of the subject of the judgments of God from primitive Aryan times down, with a full citation of authorities.

Neilson: Trial by Combat. New York, 1891.

A popular but accurate discussion of the judicial duel in England and Scotland. The author has drawn his account wholly from the original authorities, and has enlivened the subject by many picturesque incidents from trials and combats.

Thayer, James Bradley: A Preliminary Treatise on Evidence at the Common Law, Part I., Development of Trial by Jury. Boston, 1896.

The first chapter of this very scholarly work is on Older Modes of Trial, and gives a short but clear description of early English legal procedure.

Brunner, H.: Deutsche Rechtsgeschichte. Leipzig, 1892.

Two sections of this work contain much material relating to judgments of God,—§ 23, Der Rechtsgang, and § 106, Die Gottesurteile. To the latter section is prefixed a careful bibliography of works dealing with this subject.

Hinschius, Paul: Das Kirchenrecht der Katholiker und Protestanten in Deutschland. Berlin, 1895.

The fifth volume of this the most satisfactory work on the ecclesiastical law of Germany contains much material for the study of excommunication and interdict. Pages 1-51 and 493-563 relate directly to these subjects.

Lea, Henry C.: Studies in Church History. Philadelphia, 1883.

More than half of this book is taken up by an essay on excommunication, the most complete and satisfactory treatment of the subject that we possess. In it the rise and development of the censure are traced, the abuses that grew out of it are noted, and its gradual decline is explained.

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